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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. CRUZ MUNSTER, Defendant and Appellant.	D068629 (Super. Ct. No. SCD251513)

APPEAL from a judgment of the Superior Court of San Diego County, Louis R. Hanioan, Judge. Affirmed.

Stephen M. Vasil, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

Cruz Munster was convicted by a jury of one count of carrying a concealed dirk or dagger. (Pen. Code, § 21310; all statutory references are to this code.) He was sentenced

to local imprisonment for the midterm of two years. (§ 1170, subd. (h).) He appeals, contending he is entitled to reversal for prejudicial instructional and evidentiary error.

Munster was charged with the offense after being stopped on the street by a patrolling police officer, who noticed that Munster had something protruding within his jacket sleeve toward the cuff area. The officer asked Munster if he had any weapons on him, and Munster responded that he had a knife. The officer pulled from Munster's sleeve an eight-inch bamboo handled, bamboo capped fixed blade knife. On appeal, Munster argues that the instructions given to the jury erroneously defined the statutory terms "dirk or dagger" by incorrectly describing an exception to those terms created under section 16470, a "pocketknife." After discussions between the court and counsel about what kind of a knife was found, the trial court added descriptive language to the pattern instruction (CALCRIM No. 2501), stating that a "pocketknife" cannot be used as a stabbing weapon unless the user performs "several intervening manipulations." (*In re Luke W.* (2001) 88 Cal.App.4th 650, 655-656 (*Luke W.*).) Munster claims that his due process rights and Sixth Amendment right to competent counsel were compromised when the jury received this definition of an element of the offense, because it was attributable either to ineffective assistance of trial counsel or to the trial court's independent misstatement of the statutory criteria. (*People v. Hajek* (2014) 58 Cal.4th 1144, 1220 (*Hajek*) [ultimate question for instructional error claim is existence of any reasonable likelihood that jury impermissibly applied the challenged instruction].)

Munster also contends the trial court abused its discretion in denying his motion to exclude testimony from the arresting officer, who described the nature of his patrol duties

while assigned to the gang suppression detail, and who stated he was already acquainted with Munster before the encounter that led to the arrest. As will be discussed, we find no prejudicial instructional error nor harmful evidentiary error. We affirm.

I

FACTUAL BACKGROUND

On a fall afternoon in 2013, Munster and a friend were walking along a city street. San Diego police officer Aziz Brou, from the gang suppression team, and a fellow officer were on duty in the area. They were driving around in their patrol car to observe neighborhood conditions and to try to talk to people and witnesses if crimes occurred. Officer Brou had previously talked to Munster, and when he saw him, the officers parked the car and got out to make contact. As Brou walked up to Munster, he started making conversation and extended his hand for a handshake. Although Munster started to comply, he pulled back and said he did not want to shake hands. Brou noticed Munster was holding things in his fist and asked about them. Munster replied, "It's just bud," which Brou understood to refer to marijuana. Brou asked Munster to unclench his hand, and when he did, Brou saw a blue cigarette lighter and a leafy substance inside a white plastic wrapper.

As Brou was taking the lighter and bindle from Munster's hand, he noticed something was protruding within the left forearm area of Munster's jacket, near the cuff. Brou asked Munster if he had any weapons, and looking towards his left forearm, Munster said he had a knife. Brou asked Munster to turn around so he could remove the knife from his jacket sleeve, and Munster cooperated. Once Brou patted down the jacket

sleeve, he felt something and pulling up the sleeve, was able to remove an eight-inch cylindrical bamboo object. This closed bamboo cylinder could be pulled apart into two pieces, one piece being a six-inch long sheath and the other, a bamboo handle with a two and three-quarter inch knife blade fixed in it. Munster was arrested and charged.

II

STATUTORY SCHEME

"The question of what constitutes a dirk or dagger has bedeviled courts for decades." (*People v. Sisneros* (1997) 57 Cal.App.4th 1454, 1456 (*Sisneros*).) Section 21310 and its predecessor statutes make it a crime to carry on the person a concealed dirk or dagger. Section 16470 now provides the applicable definition of dirk or dagger as "a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited [by the switchblade definition in section 21510], or a pocketknife *is capable of ready use* as a stabbing weapon that may inflict great bodily injury or death *only if the blade of the knife is exposed and locked into position*." (§ 16470, italics added; see *Luke W., supra*, 88 Cal.App.4th 650, 653; *In re George W.* (1998) 68 Cal.App.4th 1208, 1213-1215.)

As this court outlined in *People v. Mitchell* (2012) 209 Cal.App.4th 1364, 1371 (*Mitchell*), the Legislature's purpose in enacting this prohibition "was to combat the dangers arising from the concealment of weapons," and to enable third parties to protect themselves from exposure to the risk of a surprise attack. (*Id.* at pp. 1371, 1375.) There, we relied on *Luke W., supra*, 88 Cal.App.4th 650, 653 for the proposition that "the

folding or pocketknife exception is consistent with the statute's objective because folded knives are not capable of ready use 'without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.' " (*Mitchell*, *supra*, at p. 1371.) For example, in *Sisneros*, *supra*, 57 Cal.App.4th 1454, the court concluded that "the 'capable of ready use' requirement excludes from the definition of dirk or dagger a device carried in a configuration that requires assembly before it can be utilized as a weapon." (*Id*. at p. 1457; § 16470.)

We previously denied Munster's separately filed motion for judicial notice on appeal, submitting legislative history materials. (Evid. Code, §§ 452, 453, 459, subd. (a).) The trial court was not asked to take judicial notice of this information concerning the predecessor statute to section 16470, documenting the creation of certain exceptions to the "dirk or dagger" definition, including a "pocketknife." The gist of this information was thoroughly discussed in cases such as *Luke W.*, *supra*, 88 Cal.App.4th 650, 652-654 and *In re George W.*, *supra*, 68 Cal.App.4th 1208, 1214. It is clear from the 1995 and 1997 amendment history, as relevant to sections 16470 and 21310, that the exceptions from the dirk/dagger definition were first expanded, then narrowed, to accommodate different considerations about the dangerous quality of a weapon's ready availability for use. (*People v. Castillolopez* (2016) 63 Cal.4th 322, 328-329.) The 1997 amendment clarified that a folding knife or pocketknife would qualify as a dirk or dagger only if the blade was *exposed and locked into position*. (*Ibid.*; *Luke W.*, *supra*, at pp. 653-654; § 16470.)

III

ARGUMENTS ON INSTRUCTIONAL ERROR

A. Contentions and Review Standards

Whether a challenged instruction accurately conveys the legal requirements for proving a particular offense is a question of law subject to independent review. (*People v. Posey* (2004) 32 Cal.4th 193, 2l8.) On appeal, Munster has several interrelated claims based on the sentence the trial court added to CALCRIM No. 2501, reading "*Although they may not have folding blades, pocket knives are small knives obviously designed to be carried in a pocket in a closed state, and which cannot be used until there have been several intervening manipulations.*" (Italics added.) This language tracks the analysis in *Luke W., supra,* 88 Cal.App.4th 650, 656, concerning types of knives, as quoted in the "Related Issues" notes to CALCRIM No. 2501.

For a conviction, the jury was required to find that Munster concealed a knife qualifying as a dirk or dagger that was capable of ready use as a stabbing weapon, because its "*blade was exposed and locked into position*." (§ 16470.) Here, only the "exposed" element is disputed, as this was a fixed blade knife. Officer Brou demonstrated for the jury how the bamboo cylinder could be pulled apart by placing one hand on each end and then pulling in opposite directions, to reveal the knife blade fixed in the handle. However, the bamboo cap was on the knife when found in the sleeve. In closing argument, defense counsel asked the jury to draw inferences that this was a pocketknife that did not qualify as a dirk or dagger because it was found in a closed state. In rebuttal, the prosecutor argued the evidence showed Munster was carrying a stabbing

weapon, rather than a small pocketknife that could not be used until there were several intervening manipulations of it.

Munster contends the court misunderstood the arguments his trial counsel was trying to make about the proper interpretation of the pocketknife exception in section 16470. To the extent his trial counsel contributed erroneous analysis or information to the discussions about jury instructions, he claims he was afforded ineffective assistance of counsel that prejudiced him and justifies reversal. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011-1013 (*Hudson*) [misinstruction of jury on element of the offense requires reversal, unless error was harmless beyond a reasonable doubt]; *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*).)

Munster also argues the court independently erred in telling the jury that a pocketknife is a knife that requires "several intervening manipulations" before it can be used to stab. (*People v. Breverman* (1998) 19 Cal.4th 142, 154 [trial court has sua sponte duty to ensure jury receives relevant and necessary instructional principles of law governing the case, in light of the facts before the court].) On appeal, Munster claims only one manipulation would be needed to open his capped knife, which could be considered a pocketknife, such that the trial court erroneously instructed the jury about an essential element of the offense, i.e., the definition of dirk or dagger.

The defendant may request instructions that elaborate or "pinpoint" his or her theory of the case. (*People v. Dennis* (1998) 17 Cal.4th 468, 514; *People v. San Nicolas* (2004) 34 Cal.4th 614, 670.) The trial court is not required to create such a pinpoint instruction, absent a request, and the instructions are adequate if they otherwise tell the

jury all the applicable legal principles pertinent to a case. The trial court is not obligated to instruct the jury with the precise language requested by a party, even if the proposed instruction better states the rule. (*People v. Williams* (1980) 101 Cal.App.3d 711, 719.)

When examining an ambiguous or purportedly erroneous instruction under the United States Constitution or California law, we inquire "whether there is a reasonable likelihood that the jury misconstrued or misapplied the words in violation" of such laws. (*People v. Clair* (1992) 2 Cal.4th 629, 663; *People v. Young* (2005) 34 Cal.4th 1149, 1202; *Hajek, supra*, 58 Cal.4th 1144, 1220.) In deciding the issue, we consider the specific language challenged, the whole of the instructions, argument of counsel, and the jury's findings. (*Ibid.*; *People v. Holt* (1997) 15 Cal.4th 619, 699; *People v. Franco* (2009) 180 Cal.App.4th 713, 720.)

B. Trial Proceedings; CALCRIM No. 2501 as Given

During trial, pictures of Munster in the clothes he was wearing that day were admitted, as well as pictures of the knife and the knife itself. However, the clothing was not admitted into evidence and there was no testimony about how big the pockets were.

During the preparation of jury instructions, the court and counsel discussed the statutory definitions of dirks and daggers, as found in section 16470 and case law. Defense counsel initially proposed that a modified version of CALCRIM No. 2501 be given, to add a definition of "pocketknife," on the theory that most people think a pocketknife must be a folding knife, but it could also be a fixed-blade pocketknife. She argued this was an issue that had to be decided by the jury. Amidst the proposed defense instruction was this definition, quoting from *Luke W., supra*, 88 Cal.App.4th at page 656:

"Although they may not have folding blades, small knives obviously designed to be carried in a pocket in a closed state, and which cannot be used until there have been several intervening manipulations, comport with the implied legislative intent that such knives do not fall within the definition of proscribed dirks or daggers but are a type of pocketknife excepted from the statutory proscription."

The court agreed to give a shorter, less detailed explanatory clause that would be added to CALCRIM No. 2501, to say that even a knife without a folding blade could qualify as a pocketknife. As given here, CALCRIM No. 2501 initially used the pattern language to tell the jury that Munster was charged with unlawfully carrying a concealed dirk or dagger, in violation of section 21310. The jury heard that the People must prove that: (1) The defendant carried on his person a dirk or dagger; (2) he knew that he was carrying it; (3) it was substantially concealed on his person; and (4) he knew that it could readily be used as a stabbing weapon. The People did not have to prove that he used or intended to use the alleged dirk or dagger as a weapon.

On the definition of a dirk or dagger, the court used the standard language in CALCRIM No. 2501 to explain that it could be "a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm. A pocketknife is not a dirk or dagger *unless the blade of the knife is exposed* and locked into position. [¶] A knife carried in a sheath and worn openly suspended from the waist of the wearer is not concealed." (CALCRIM No. 2501; italics added.)

As noted, the court additionally instructed the jury, pursuant to its discussions with counsel about the type of knife, that "*[*a*]lthough they may not have folding blades, pocket knives are small knives obviously designed to be carried in a pocket in a closed state and which cannot be used until there have been several intervening manipulations.*" Munster now argues that this sentence should have been omitted.

C. Analysis

In *Luke W., supra*, 88 Cal.App.4th 650, the court concluded that the statute defining pocketknives was intended to apply more broadly than simply to a pocketknife that folds. (*Id.* at p. 656.) For example, Luke's knife was found within a pocketed object that was shaped like a cassette tape, from which various implements, including a three-inch blade, could be pulled out. In the case before us, defense counsel wanted the statutory definition of the pocketknife exception to be clarified to the jury, and the court did so. We inquire whether a knife of the description established in the record, as described and shown to the jury, qualified as a dirk or dagger within the meaning of sections 21310 and 16470.

A defendant who believes that an instruction is erroneous or requires clarification generally must request correction or clarification of the instruction to avoid waiving the issue on appeal. (*People v. Hart* (1999) 20 Cal.4th 546, 622.) Munster requested that the pattern instruction be modified to add references to the pocketknife exception, to support the defense he wanted to argue, and he has arguably forfeited his claims on appeal about any error in that respect. (*Hudson*, *supra*, 38 Cal.4th 1002, 1011-1012.)

We nevertheless consider whether Munster's substantial rights were adversely affected. (§ 1259; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 103, fn. 34.) Substantial rights in this context are equated with a miscarriage of justice, which results if it is reasonably probable the defendant would have obtained a more favorable result had the jury been properly instructed. (Cal. Const., art. VI, § 13; *People v. Soojian* (2010) 190 Cal.App.4th 491, 520-521; *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).)

To interpret the statutory language supporting his argument that the pocketknife exception applied but was not properly explained to the jury, Munster claims the common dictionary meaning of "exposed" should be utilized. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122.) This suggests to him that his eight-inch knife did not have an "exposed" blade, since the bamboo cap was concealing the blade when the item was produced from the sleeve. The ease of his access to the knife was limited, in that it had to be opened by pulling it apart. (See *People v. Wade* (2016) 63 Cal.4th 137, 146 [a defendant wearing a backpack containing knives has some immediate control over its contents].) Munster argued at trial that the closed bamboo cylinder could have fitted within some kind of pocket, even though no evidence about pockets in his clothing was presented and the knife was not found in a pocket.

Arguably, this instruction made it more difficult for the jury to find that Munster's knife was a pocketknife, but he cannot show it was ineffective assistance of counsel to request that the jury be told in this manner about his defense theory of an available exception to the definition of dirk or dagger. The governmental interest served by this prohibition is to enable third parties to protect themselves from exposure to the risk of a

surprise attack with a concealed weapon. (*Mitchell, supra*, 209 Cal.App.4th 1364, 1371, 1375.) This bamboo knife was not openly carried in a sheath on Munster's waist, as the statute would have allowed. On this record, the court properly informed the jury that there are exceptions to the definition of dirk or dagger, such as different kinds of pocketknives. (CALCRIM No. 2501.)

The evidence indicated that this concealed knife or pocketknife had the requisite dangerous quality of ready availability for use, whether one or several manipulations would be required to get it out of the sleeve and uncap it. No complicated assembly steps were required. (*Sisneros, supra*, 57 Cal.App.4th 1454, 1457 [statutory requirement of "ready capability" meant to exclude certain devices from proscription].) Once the bamboo object was removed from concealment, both hands would be needed to open it. The instruction properly pointed out that more than one manipulation was required to make available the fixed blade, even once it had somehow been taken out of clothing. The court did not err in telling the jury that pocketknives may require some manipulation to make them ready for use.

An instruction that is a correct statement of the law is not erroneous. (*Hudson, supra*, 38 Cal.4th 1002, 1011-1013.) The evidence clearly presented the facts to the jury, and the arguments and instruction focused on the appropriate elements. "[A]ny theoretical possibility of confusion [may be] diminished by the parties' closing arguments. . . .' " (*Hajek, supra*, 58 Cal.4th 1144, 1220.) Even under the theory that the overall proof of an element of the offense was at stake, we can find no error in the instruction that adversely affected Munster's substantial rights. We need not reach his

arguments about the application of harmless error theory or federal constitutional standards for evaluating prejudicial error. (*Watson, supra*, 46 Cal.2d at p. 836; *Chapman, supra*, 386 U.S. at p. 24.)

IV

EVIDENTIARY ERROR ISSUES

A. Contentions and Standards of Review

Munster contends the trial court abused its discretion when denying his motion to exclude portions of Brou's testimony. Brou initially told the jury that as a member of the gang suppression team, he was "conducting saturation patrol in high-crime areas," with the goal of deterring gang crimes and trying to identify up and coming gang members. Munster's objections on relevance and prejudice grounds were sustained. (Evid. Code, §§ 210, 352.) Brou was then allowed to testify that the nature of his duties included going around talking to people on the street, investigating crimes and finding out what's going on in the neighborhood. He then testified that he recognized Munster that day and went over to talk to him.

Munster concedes he did not make a motion to strike the testimony about Brou's "up-and-coming gang members" identification project, but he argues that he can still challenge the admission of all the evidence about what Brou said he was doing at work (except he had no objection to generally mentioning the gang suppression unit). Munster claims it unfairly served to link him in particular to gang crimes, but without any supporting charges or evidence, in violation of his due process rights. He makes the same claims about Brou's statement that he knew and recognized Munster.

A trial court's ruling on the relevance and admissibility of evidence is reviewed for abuse of discretion. (*People v. Waidla* (2000) 22 Ca1.4th 690, 717; Evid. Code, § 210.) This includes rulings on gang testimony, which should be carefully scrutinized for undue prejudice. (*People v. Avitia* (2005) 127 Cal.App.4th 185, 193 (*Avitia*).) When relevant evidence is argued to be unduly prejudicial, the trial court assesses whether the probative value is outweighed by concerns of prejudice or the dangers of confusion or excessive consumption of time. (*Id*. at pp. 192-193; Evid. Code, § 352.) "Under this standard, a trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.) A harmless error standard applies to rulings that admitted evidence that should have been excluded as irrelevant or cumulative. (*People v. Panah* (2005) 35 Cal.4th 395, 477; *Watson, supra*, 46 Cal.2d 818, 835-836.)

B. Additional Factual Background

At the outset of trial, Munster's counsel sought exclusion of any testimony referring to his or his companion's alleged gang membership, which was granted. The trial court denied, however, Munster's motion to exclude evidence about Brou's duties as a member of the gang suppression team, or about Brou's previous acquaintance with him. The court considered that Brou's assignment was relevant information to explain why he had been in the neighborhood contacting people on the street that day. The court rejected Munster's argument that any mention of Brou's duties as including identification of gang members would necessarily lead to inferences that Munster belonged to a gang, since

Munster would be allowed to show that the police officer also contacted citizens generally.

When Brou started testifying, he gave his occupation as working for the San Diego Police Department's gang suppression team. When the prosecutor asked him to describe his duties, a series of objections and rulings took place. Ultimately, the court sustained objections under Evidence Code sections 352 and 210, and the Fourteenth Amendment to Brou's initial answer referring to conducting saturation patrols in high crime areas, to try to deter gang related crime through police presence in the area. Brou added, "We also work to try to determine up-and-coming gang members."

Next, the prosecutor asked if Brou made it part of his duties to go around talking to people on the street, to investigate crimes and find out what is going on in the neighborhood. Brou said yes and that when he was doing so that day, he saw someone he knew, Munster. He testified he stopped and talked to Munster, who he said was in court as the defendant. After he had greeted Munster on the street and tried to shake his hand, he noticed the lighter and bindle Munster was holding and the bulge in his sleeve. After asking about it, he extracted the knife from Munster's forearm area.

During instructions, the court gave the jury the language of CALCRIM No. 222, stating that if an objection had been sustained, it must ignore the question. It also told the jury not to speculate about potential answers and said that if testimony was stricken from the record, it must be disregarded.

C. Applicable Criteria Regarding Gang Evidence and Analysis

The Supreme Court has repeatedly stated that gang evidence is inadmissible if it is only tangentially relevant to material issues raised about the charged offenses. (Evid. Code, § 210; see *People v. Cox* (1991) 53 Cal.3d 618, 660.) Arguably, a defendant's gang activities may be relevant and probative of motive and intent on some substantive criminal charges. (*People v. Albarran* (2007) 149 Cal.App.4th 214, 217 (*Albarran*).) However, the trial court must carefully scrutinize such evidence before admitting it, because "evidence of a criminal defendant's gang membership creates a risk the jury will improperly infer the defendant has a criminal disposition and is therefore guilty of the offense charged." (*People v. Williams* (1997) 16 Cal.4th 153, 193; *Avitia, supra*, 127 Cal.App.4th 185, 193; Evid. Code, § 1101, subd. (a) [prohibits character evidence to show the defendant committed a specific unlawful act].) Here, the trial court kept out evidence of gang membership, but it allowed Brou to tell the jury what he was doing as a member of the gang suppression unit, when he encountered Munster on the street.

Irrelevant gang evidence can be "extremely and uniquely inflammatory, such that the prejudice arising from the jury's exposure to it could only have served to cloud their resolution of the issues." (*Albarran, supra*, 149 Cal.App.4th at p. 230.) Where irrelevant and prejudicial gang evidence has no legitimate purpose in the trial, its admission into evidence can be determined to violate the defendant's due process rights. (*Id*. at p. 232.) In such a case, the " 'dispositive issue is . . . whether the trial court committed an error which rendered the trial "so 'arbitrary and fundamentally unfair' that it violated federal due process." ' " (*Id*. at pp. 229-230.)

Munster appropriately points out that the objections made at trial by his defense counsel were somewhat unclear, and the trial court's rulings were somewhat ambiguous. No testimony was formally stricken. (Evid. Code, § 353, subd. (a) [timely motion to strike inadmissible evidence required to preserve point].) We interpret his arguments on appeal as broadly challenging each aspect of the testimony about Brou's gang suppression duties, as discussed in the briefing (talking to people on the street, identifying possible gang members, and being acquainted with Munster).

Even assuming, as does the Attorney General in the briefing, that there were some irrelevance problems with Brou's somewhat generic testimony, there was still an adequate basis in the record for the trial court to permit Brou to explain why he was on the city street that day, contacting people in his official capacity. That testimony was relevant to an understanding of his conduct in deciding to stop and talk to Munster, and it went to the identity of the defendant and somewhat to the nature of his concealment of the knife.

Munster complains that the possibility of prejudice was increased by the evidence that he was identified and questioned by a police officer in the course of his duties. (See *People v. Mixon* (1982) 129 Cal.App.3d 118, 127-129 [abuse of discretion review for lay opinion testimony on identification; foundation for officer's identification of defendant in surveillance photographs was supplied by his prior personal knowledge about defendant].) It was legitimate foundation for Brou's testimony about the encounter to say why he was talking to people on the street. There was no undue focus on gang culture or activities. (*Avitia*, *supra*, 127 Cal.App.4th 185, 194.) Unlike in *Albarran*, the gang

references in this case were not so sensational and prejudicial as to render the trial "fundamentally unfair." (*Albarran, supra*, 149 Cal.App.4th at p. 232.) The circumstances under which the knife came to police attention did not unfairly distract the jury from the main questions presented, the physical characteristics of the knife and whether it qualified as a dirk or dagger.

This type of evidentiary decision is properly left to the sound discretion of the trial courts. (*Avitia, supra*, 127 Cal.App.4th 185, 193-194.) On the record before us, we cannot say the trial court exceeded the bounds of reason or that its decision was unreasonable or arbitrary. Without evidentiary error, we need not reach Munster's arguments about the application of harmless error theory or federal constitutional standards for evaluating alleged error. (*Watson, supra*, 46 Cal.2d at p. 836; *Chapman, supra*, 386 U.S. at p. 24.)

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.